

October 31, 2019

**VIA ECFS**

***NOTICE OF EX PARTE***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

**Re:   *Accelerating Wireless Broadband Deployment by Removing Barriers to  
Infrastructure Investment, WT Docket No. 17-79; Accelerating Wireline Broadband  
Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-  
84***

Dear Ms. Dortch:

On October 30, 2019, Ted Gilliam, General Counsel, Western U.S. and Strategic Networks, Zayo Group, LLC (“Zayo”), Brandon Reed, Vice President, Underlying Rights and Government Relations, Zayo, and the undersigned met with Joseph Calascione, Legal Advisor to Commissioner Carr. On October 31, 2019, we met with Nirali Patel, Legal Advisor to Chairman Pai and Daniel Kahn of the Wireline Competition Bureau. During the meetings, Mr. Gilliam and Mr. Reed shared the attached chart and explained that, as summarized in the chart, many local and state governments condition Zayo’s access to public rights of way for the purpose of deploying wireline facilities on the payment of above-cost and discriminatory access fees as well as on compliance with ambiguous in-kind contribution requirements. They explained further that Zayo and other wireline service providers deliver critically important backhaul functions for wireless networks and that above-cost, discriminatory, and ambiguous state and local right of way access requirements divert finite financial and human resources away from network deployment and slow the deployment of 5G and wireline broadband services. They asserted that, as a result, the Commission should clarify that the Declaratory Ruling<sup>1</sup> adopted in the above-referenced proceeding applies equally to wireline facilities and Small Wireless Facilities.

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<sup>1</sup> See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088, ¶¶ 30-102 (2018).

Please contact the undersigned with questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

*Counsel for Zayo Group, LLC*

cc: Joseph Calascione  
Nirali Patel  
Daniel Kahn

Enclosure

Zayo and other LECs face a multitude of different requirements when attempting to obtain permits for deployment of broadband infrastructure. Below are a few examples:

Jurisdiction	Requirements	Purpose of Zayo Permits
Goodyear, AZ	Payment of “privilege tax” fee as well as a per lineal foot fee of \$.89 annually. City uses its leverage to obtain “in-kind” services. All as permitted under State law. If Zayo does not have a route that the City desires, Zayo will have to place facilities in another part of the City or pay the per lineal foot fee.	Build broadband infrastructure to support data centers, broadband for webscale customers and future small cell wireless facilities including 5G.
Scottsdale, AZ	Currently requires payment of “privilege tax” as well as a per linear foot fee of \$2.01 annually which City leverages to obtain “in-kind” services, all as permitted under State law. If Zayo does not have a route that the City desires, Zayo will have to place facilities in another part of the City or pay the per lineal foot fee. In recent discussions, the City stated that it would not release permits to Zayo unless Zayo provided 12 fibers in its build to the City.	Support of large bandwidth webscale customers and future small cell wireless facilities including 5G.
Avondale, AZ	Currently no agreement, and City will not issue permits until agreement is completed. City will require similar payment of “privilege tax” as well as a per linear foot fee of \$2.10 which City will likely leverage to obtain “in-kind” services, all as permitted under State law.	Build broadband infrastructure to support data centers, broadband for webscale customers and future small cell wireless facilities including 5G.
Portland, OR	City assesses 5% of gross revenue from all services Zayo provides within the City. Last year Zayo settled with the City on an amount over \$700,000 as the City negotiates what it considers as “telecommunications revenue,”	Support of large bandwidth webscale customers and future small cell wireless facilities including 5G.

	leaving Zayo and others uncertain as to liability. The City does not assess ILECs the same rate, but rather has interpreted State law as permitting cities to only recover 7% of local exchange access revenue for ILECs.	
Eugene, OR	City assesses 5% of gross revenue, but has demanded that such assessments include revenue from internet access services.	Support of large bandwidth webscale customers and future small cell wireless facilities including 5G.
State of New York	State has enacted a statute which permits the Director for the NY Department of Transportation Right of Way to charge a fee which providers cannot pass on to customers. The statute permits the Director to set the rate.	Support of large bandwidth webscale customers and future small cell wireless facilities including 5G.
City of Los Angeles, CA	City has enacted ordinance which results in fees for excavation that will cost carriers between \$80 per foot to over \$190 per foot, depending on the street. Very few carriers or carrier customers will deploy at these costs.	Support of large bandwidth webscale customers and future small cell wireless facilities including 5G.
Georgia Department of Transportation	State requires right of way fees of \$1,000 in rural areas and \$5,000 or more for urban areas if a provider does not serve end user customers in the municipality where the right of way is located (i.e., if the sole use of the right of way is to haul traffic to and from end user customers located in other jurisdictions). This equates to millions for even for relatively small providers. Regardless, GDOT applies the long-haul pricing methodology even when providers serve local users.	Construction of long-haul broadband routes that enable transfer of huge quantities of backhaul necessary to support broadband and 5G.
State of Maryland	State requires a resource sharing agreement ("RSA") under which providers obtain access to right of way in return for monetary compensation, equipment, or services.	Support of large bandwidth webscale customers and future small cell wireless facilities including 5G.

Virginia Department of Transportation	Virginia DOT requires providers to pay compensation for access to right of way as deemed proper by the Commissioner of Highways. Alternatively, the provider may enter into a shared resource agreement “as may be deemed proper by the Commissioner of Highways.”	Construction of long-haul broadband routes that enable transfer of huge quantities of backhaul necessary to support broadband and 5G.
San Antonio, TX	City assesses 5% of gross revenue, despite state law prohibiting such assessment.	Support of large bandwidth webscale customers and future small cell wireless facilities including 5G.
Ohio Department of Transportation	Recently issued RFI asking providers how ODOT can “monetize” it’s ROW asset; halting all permits for “long-haul” networks in the meantime. Ignores cost-based pricing requirements for ROW management.	Construction of long-haul broadband routes in support of large customer data center needs.
City of Albuquerque, NM	Payment of 3% of gross revenues, including dark fiber.	Dark fiber to cell towers in support of cell services.
Seattle Public Utilities	City charges an “Annual Land Use Fee” for infrastructure along the right-of-way. There are 12 price levels for the annual linear land use rates. These fees appear to contravene Rev. Code Washington (RCW) § 35.21.860 (2009), which provides in part 1(b) <i>A fee may be charged to such businesses or service providers that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW</i>	Dark fiber to small wireless facilities, broadband for webscale customers.

- Discrepancies between states and even cities within a State as well as substantial discretion in setting compensation lead to uncertainty in Zayo's build out costs.
- Fees are frequently not cost-based.
- Fees frequently result in discrimination between ILECs and non-ILECs.
- Fees result in discrimination between carrier with facilities in the ground and those that are required to build.
- 5G deployment becomes uncertain because jurisdictions move revenue "taxes" to wireline in an inconsistent, non-cost based, unpredictable, and discriminatory manner.
- The many inconsistencies in Circuit Court interpretations concerning 253 apply equally to wireless and wireline.
- FCC needs to conduct a proceeding to ensure the same certainty concerning deployment of wireless facilities also applies to wireline.